IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.10/2006

Jaipur Vidyut Vitaran Nigam Limited & Another
...defendant-appellants
Versus
Lohadiram S/o Shri Ramkunwar
...plaintiff-respondent

Date of Order ::: 12.10.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri G.S. Fauzdar, Counsel for defendant-appellants
Shri J.P. Gupta, Counsel for plaintiff-respondent
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By the Court:-

Heard learned counsel for the parties.

The plaintiff-respondent filed a suit for compensation of a sum of Rs.28,000/- under the provisions of the Fatal Accident Act, 1855 in respect of death of buffalo due to negligence on the part of the defendants. The lower court dismissed the suit. However, on an appeal on behalf of the plaintiff, the first appellate court recorded a finding that there was negligence on the part of the defendant and consequently awarded a compensation of Rs.18,000/- for death of buffalo.

Learned counsel for the appellants submits that application under the provisions of the Fatal Accident

Act was not maintainable in respect of death of buffalo and, as such, the judgment and decree passed by the first appellate court is liable to be set-aside.

I have considered the submissions of the learned counsel for both the parties. The lower appellate court, while deciding issue no.7, was conscious about this fact and came to a conclusion that the present suit was not maintainable under the provisions of the Fatal Accident Act but he passed a decree under the provisions of 'law of torts' and directed the plaintiff to pay the required court fee on the suit for compensation of Rs.28,000/- which ought to have been paid in the lower court, if the suit would have been for compensation under the provisions of 'law of torts'.

Learned counsel for the appellants does not dispute that if the suit would have been filed for compensation under the provisions of 'law of torts' then the same was maintainable. Learned counsel for the appellants also argued that there was no negligence in the present matter on the part of the defendant-appellants and award has wrongly been passed in the present case.

So far as question of negligence is concerned, the same is a question of fact and there is a finding

of first appellate court in this regard, which cannot be interfered with by this court in second appeal under Section 100 of the C.P.C. The lower appellate court has already treated this suit for compensation under the provisions of 'law of torts' in place of the suit under the provisions of Fatal Accident Act. The first appellate court also directed the plaintiff to pay the required court-fees. I do not find any illegality or perversity in the impugned judgment passed by the first appellate court so as to interfere in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is dismissed in limine.

(Narendra Kumar Jain) J.

//Jaiman//